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UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

REGION 20

WAL-MART STORES, INC., and THE ORGANIZATION UNITED FOR RESPECT AT WALMART, and UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION AND ORGANIZATION UNITED FOR RESPECT AT WALMART.	Case Nos. 12-CA-121109 12-CA-124847 16-CA-124905 20-CA-126824 20-CA-138553 32-CA-153782

UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION AND ORGANIZING UNITED FOR RESPECT AT WALMART'S OPPOSITION TO WALMART'S PARTIAL MOTION TO DISMISS AND REQUEST FOR EXPEDITED CONSIDERATION

Charging Parties join in and supplement the General Counsel's opposition to Respondent's Partial Motion to Dismiss and Request for Expedited Consideration (hereinafter "Motion" or "PMTD").

Respondent's Partial Motion to Dismiss Complaint should be denied in its entirety. Walmart alleges that the General Counsel lacks jurisdiction over allegations in the Complaint that

were not specifically plead in any charge. Respondent's Motion must be denied because it fails to show that there is no set of facts that establish the Board's jurisdiction over the disputed allegations. First, the language of the charges covers all of the complaint allegations. Second, even if the language of the charges do not encompass the disputed allegations, the General Counsel has jurisdiction because the charges are closely related under *Redd-I, Inc.*, 290 NLRB 1115, 1116 (1988) (*Redd-I*) and *Carney Hospital*, 350 NLRB 627, 628 (2007) (*Carney Hospital*).

At best, the pleadings and record show that the Board has jurisdiction over the disputed allegations because the allegations in the charges encompass all of the allegations in the Amended Consolidated Complaint, including the disputed allegations. Even if they do not, which they do, the Board retains jurisdiction over the disputed allegations because they are closely related to the Complaint allegations under the *Redd-I* test and *Carney Hospital* line of cases. At worst, the pleadings and Respondent's Motion show that whether the disputed allegations are factually related to the Complaint allegations are genuine issues of material fact that should be resolved through the development of a factual and evidentiary record at trial.

I. LEGAL STANDARD

A. MOTIONS TO DISMISS

"In ruling on a motion to dismiss under Section 102.24 of the Board's Rules, the Board construes the Complaint in the light most favorable to the General Counsel, accepts all factual allegations as true, and determines whether the General Counsel can prove any set of facts in support of his claims that would entitle him to relief. Under this standard, [the Board] accept[s] the version of events as stated in the General Counsel's pleadings." *Detroit Newspapers*, 330 NLRB 524, 526, n. 7 (2000). Under the Board's Rules and regulations, a motion for dismissal must be denied where the pleadings indicate on their face that there is a genuine issue of material fact. Board's Rules and Regulations § 102.24. Based on these principles, and as discussed infra, summary dismissal is wholly inappropriate in this case.

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II. THE CHARGES ENCOMPASS ALL COMPLAINT ALLEGATIONS, INCLUDING THE DISPUTED ALLEGATIONS

The language of the first amended charge in 20-CA-138553 covers all allegations pled in the Amended Consolidated Complaint. See PMTD, Ex. 11 (20-CA-138553 Charge). Contrary to Respondent's argument, the first amended charge does not limit its allegations of Respondent's violations to Respondent's unlawful issuance of unexcused absences to employees who missed work to participate in protected strikes. *See* PMTD, Ex. 11 [20-CA-138553 Charge]. Rather, the first amended charge alleges that Respondent "violated Section 8(a)(1) of the Act by *retaliating* against employees because they engaged in unfair labor practice strikes." *Ibid.*, emphasis added. The term "retaliating" is broader and encompasses not only the issuance of unexcused absences to employees for participating in protected strikes, but also includes the all the various unlawful acts Respondent committed against employees due to their participation in protected strikes, including: 1) disciplining (Compl., ¶¶ 21(c), 21(e)) and discharging employees (Compl., ¶¶ 14(c), 14(d), 15(c), 15(d)); 2) threatening (Compl., ¶¶ 12(a), 12(b)) and interrogating employees (Compl., ¶¶ 17(d), 26)); 3) interfering with employees' strike activity (Compl., ¶ 24); 4) engaging in surveillance of employees' protected activity (Compl. ¶¶ 9(a), 9(b)); 5) prohibiting employees from wearing union insignia (Compl. ¶¶ 25, 27(c)); and 6) denying employees access to its stores (Complaint ¶¶ 27(a), 27(b)).

Moreover, the charge in 12-CA-121209 (interfered with employees' right to distribute handbills outside its store and access its stores) and the first amended charges in 20-CA-126824 (created an impression of surveillance, and threatened and interrogated employees, and discharged an employee for their protected concerted activities) and 16-CA-124905 (created impression of surveillance, and interrogated employees) further cover the Complaint allegations that Respondent claims fall outside the scope of the charges. See General Counsel's Opposition to Walmart Stores, Inc.'s Petition to Revoke Subpoena Duces Tecum ("GC's Opp'n to PRV), pp. 7-8. Because the disputed allegations are covered by the first amended charge of 20-CA-138553 and the consolidated charges referenced above, the Board has jurisdiction to rule on those allegations.

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Moreover, the Respondent's Motion misstates the Board's rules and case law. Neither Board case law nor its Casehandling Manual requires the Regional Director to seek amended charges that specify every single allegation in the complaint. To the contrary, the Board rules and case law cited by Respondent in its Motion gives the Board agent investigating the charge the discretion to determine whether the charge supports the complaint allegations covering the unfair labor practices and whether to seek an amended charge. See NLRB Casehandling Manual § 10062.5. According to section 10062.5 of the Board's Casehandling Manual, it is the "Board agents, with appropriate supervision, [who] must determine whether the charge is sufficient to support complaint allegations covering the apparent unfair labor practices found." Compare with PMTD, p. 7. Section 10062.5 further states that, "[i]f the allegations of the charge are to narrow, not sufficiently specific or otherwise flawed, the charging party or its representative should be apprised of the potential deficiency in the existing charge and given the opportunity to file an amended charge"—but this language again makes clear that it is the Board agent who has the discretion to determine whether the charge is sufficient to support the complaint allegations and apprises the charging party of the need to file an amended charge. Compare with PMTD, p. 7. Similarly, the other sources cited by Respondent, *Towne Ford Inc.* and Casehandling Manual section 10264.1 both cite the rule in Casehandling Manual section 10062.5, which, again, gives the Board agent discretion to determine whether the charge is sufficient to support the complaint allegations. *See* 327 NLRB 193, 199 (1998) (quoting NLRB Casehandling Manual, Sec. 10062.5."); Casehandling Manual section 10264.1 (citing Casehandling Manual section 10062.5); compare with PMTD, pp. 7-8.

Here, per the rules and case law cited by Respondent's Motion, the Region properly determined that the allegation in the charge in 20-CA-138553, that Respondent retaliated against employees because they participated in protected strikes, as well as the consolidated charges, cover all of the allegations in the Amended Consolidated Complaint, including the disputed allegations. On this basis, the Board has jurisdiction to rule on the disputed allegations and Respondent's Motion should be denied.

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III. THE DISPUTED ALLEGATIONS ARE CLOSELY RELATED TO THE CHARGES

Even if the filed charges did not encompass all of the disputed Complaint allegations, which they do, the disputed allegations are closely related to the charges, satisfying the test in *Redd-I, Inc.*, 290 NLRB 1115, 1116 (1988).

A. THE BOARD HAS JURISDICTION OVER THE DISPUTED ALLEGATIONS UNDER *REDD-I*

"[T]he Supreme Court has long since made clear that Section 10(b) permits litigation of certain unfair labor practice charges that were not raised in timely charge." *Carney Hosp.*, 350 NLRB 627, 628 (2007) (citing *NLRB v. Fant Milling Co.*, 360 U.S. 301, 309 (1959) (*Fant Milling*); *see Redd-I, Inc.*, 290 NLRB 1115, 1116-118 (1988), citing *Fant Milling Co.*, 360 U.S. 301; *National Licorice Co. v. NLRB*, 309 U.S. 350 (1940); *NLRB v. Dinion Coil Co.,* 201 F.2d 484, (2d Cir. 1952). In *NLRB v. Fant Milling Co.*, the Supreme Court held that a complaint may encompass any matter sufficiently related to or growing out of conduct alleged in a charge. 360 U.S. 301. The Supreme Court reasoned that "[w]hatever restrictions the requirements of a charge may be thought to place upon subsequent proceedings by the Board, we can find no warrant in the language or purposes of the Act for saying that it precludes the Board from dealing adequately with unfair labor practices which are related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board." *Fant Milling Co.*, 360 U.S. at pp. 306-307; see *Carney Hosp.*, 350 NLRB at p. 628 (citing *ibid.*).

The Supreme Court further explained compelling reasons in *Fant Milling Co.* for not precluding litigation of allegations closely related to allegations specifically raised in a charge. According to the Court, "a charge filed with the Labor Board is not to be measured by the standards applicable to a pleading in a private lawsuit. Its purpose is merely to set in motion the machinery of an inquiry. The responsibility of making that inquiry, and of framing the issues in the case is one that Congress has imposed upon the Board, not the charging party. To confine the Board in its inquiry and in framing the complaint to the specific matters alleged in the charge would reduce the statutory machinery to a vehicle for the vindication of private rights. This would be alien to the basic purpose of the Act. The Board was created not to adjudicate private

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controversies but to advance the public interest in eliminating obstructions to interstate commerce, as this Court has recognized from the beginning. Once its jurisdiction is invoked the Board must be left free to make full inquiry under its broad investigatory power in order properly to discharge the duty of protecting public rights which Congress has imposed upon it. There can be no justification for confining such an inquiry to the precise particularizations of a charge. *N.L.R.B. v. Fant Milling Co.*, 360 U.S. at pp. 307–09.

The Board established its test for determining whether allegations are "closely related" in *Redd-I, Inc.* 90 NLRB 1115, 1116 (1988). Under *Redd-I*, the Board considers the following: (1) whether the otherwise untimely allegation is of the same class as that of the timely filed charge, i.e., whether the allegations involve the same legal theory and usually the same section of the Act; (2) whether the otherwise untimely allegation arises from the same factual situation or sequence of events as the allegation in the timely charge, i.e., whether the allegations involve similar conduct, usually during the same time period, and with a similar object. *Id.* at 1118. The Board also (3) "*may look* at whether a respondent would raise the same or similar defenses to both allegations" (*Id.* at 1118; see *Carney Hosp.*, 350 NLRB at p. 628)—however the third factor, "as indicated by its language, is not a mandatory aspect of the *Redd-I* test." *Carney Hosp.*, 350 NLRB at p. 628, n. 8; *see Earthgrains Co*, 351 NLRB at p. 737, n. 18 (2007). The Board decided that the same "closely related" test should apply when the General Counsel adds uncharged allegations to a complaint. *Nickles Bakery of Indiana*, 296 NLRB 927, 927-928 (1989).

1. *Carney Hospital* clarified that disputed allegations that are part of an employer's organized plan to undermine employees' protected activities establish a sufficient factual relationship under the *Redd-I* test

It is well-established under *Carney Hospital* and its progeny that the second prong of the *Redd-I* test is satisfied if "a sufficient factual relationship can be established by showing that the timely and untimely alleged employer actions are part of an overall employer plan to undermine the union activity." 350 NLRB at p. 630 (internal quotations and citations omitted); *see Skc Elec., Inc. & Int'l Bhd. of Elec. Workers, Local Union No. 124 & Int'l Bhd. of Elec. Workers, Local Union No. 257*, 350 NLRB 857 (2007); *The Earthgrains Co. & Bakery, Confectionery & Tobacco Workers Int'l Union, Local 343, Afl-Cio*, 351 NLRB 733 (2007); *Local 324, Int'l Union*

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of Operating Engineers, 353 NLRB 809 (2009); *Salon/spa at Boro, Inc.*, 356 NLRB 444 (2010); *Cont'l Auto Parts & United Auto Workers, Region 9, Local 2326*, 357 NLRB 840 (2011); *W. Ref. Wholesale, Inc. an Affiliate of W. Ref., Inc. & Giant Indus., Inc., A Wholly Owned Subsidiary of W. Ref., Inc. & Chauffeurs, Teamsters & Helpers Local Union 492, Int'l Bhd. of Teamsters*, 2013 WL 1804148 (Apr. 29, 2013); *Wal-Mart Stores, Inc. & Ryan Cook, an Individual.*, 2016 WL 4547576 (Aug. 31, 2016). Specifically, in *Carney Hospital*, the Board held that "where the two sets of allegations demonstrate similar conduct, usually during the same period with a similar object, or there is causal nexus between the allegations and they are part of a chain or progression of events, or they are part of an overall plan to undermine union activity, we will find that the second prong of the *Redd-I* test has been satisfied." 350 NLRB at p. 630 (internal quotations and citations omitted).

2. Respondent's motion must be denied because it fails to show that there is no set of facts that can establish that the disputed allegations are closely related under *Carney Hospital*

Respondent's motion fails because it fails to mention much less show that the General Counsel cannot show that the disputed allegations are part of an overall plan under *Carney Hospital* and therefore related. The General Counsel has already argued that it will present facts and evidence at the hearing that demonstrate that the disputed allegations are part of Respondent's overall plan to undermine employees' protected concerted activities. GC's Opp'n to Resp.'s PRV, pp. 10-12. If the General Counsel can demonstrate that the disputed allegations are part of an overall employer plan to undermine employees' protected activities, it would satisfy the second mandatory prong of the *Redd-I* test. See *Redd-I, Inc.*, 90 NLRB at p. 118; *Carney Hosp.*, 350 NLRB at p. 628, n. 8.

Respondent's motion to dismiss fails because it does not even argue, much less demonstrate, that there is no set of facts that can establish that the disputed allegations were part of a an overall plan to undermine employees' protected concerted activities. See PMTD. The Motion completely fails to address the General Counsel's central argument that shows the Board has jurisdiction over the disputed charges. Therefore, even if every reasonable inference is made in favor of Respondent's Motion, the General Counsel can still show that that the disputed

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allegations were part of an overall plan and closely related under *Redd-I* and *Carney Hospital*, and, thus, under the Board's jurisdiction.

Respondent is clearly aware of *Carney Hospital*'s holding and its progeny, as Respondent cites to *Carney Hospital* throughout its Motion. See PMTD, pp. 9, 11, 14, 24. Despite this, Respondent ignored the central holding in the case (that allegations that are part of an overall plan by the employer to discourage protected activities are closely related under the *Redd-I* test) and failed to show that the General Counsel cannot show the disputed allegations are closely related and under the Board's jurisdiction under *Redd-I* and *Carney Hospital*. *See* 350 NLRB at p. 630.

Thus, the balance of Respondent's Motion shows that there is at least one set of facts that can establish the Board's jurisdiction over the disputed allegations at trial. For this reason, Respondent's Motion should be denied.

B. THE CLOSELY RELATED TEST IS SATISFIED

The disputed Complaint allegations that Respondent claims are outside the scope of the filed charges are closely related to the allegations raised in those charges under *Redd-I* and *Carney Hospital*.

1. The disputed allegations have the same legal theories as the rest of the Complaint allegations, satisfying the first mandatory prong of the *Redd-I test*

All Complaint allegations, including the disputed allegations, are of the same class because they involve the same section of the Act (8(a)(1)) and involve the same legal theory: that Respondent engaged in 8(a)(1) violations as part of an overall effort to discourage employees from engaging in protected concerted activities, including ULP strikes. The Board has held that where a charge alleges that an employer has engaged in unlawful retaliatory conduct to discourage employees from engaging in protected activity, even allegations from *different sections* of the Act will be held to be of the same class and legal theory because the legal theory—that the respondent engaged in unlawful conduct as part of an effort to prevent the organization of its employees—is the same for both sets of allegations. *See SKC Electric, Inc.*, 350 NLRB at pp. 858-860, 870 (8(a)(1) and 8(a)(3); adopting ALJ's finding that "both sets of allegations involved the same legal theory in that they alleged conduct designed to defeat the Union's organizational

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campaign"); *Pincus Elevator & Electric Co.*, 308 NLRB 684, 690 (1992) (Section 8(a)(1) and 8(a)(3); violations held to be of the same class because the legal theory that the respondent engaged in unlawful conduct as part of an effort to prevent the organization of its employees was the same); *NLRB v. Braswell Motor Freight Lines*, 486 F.2d 743, 746 (7th Cir. 1973) (amendments allowed that deal with acts that are all "part of an overall plan to resist organization."); *Recycle America*, 308 NLRB 50 fn. 2 (1992) (amendment permitted "whether or not the acts are of precisely the same kind and whether or not the charge specifically alleges the existence of an overall plan on the part of the employer); *Outboard Marine Corp.*, 307 NLRB 1333, 1334 (1992) (threats of plant closure closely related to charge allegations where all allegations center on respondent's plan to defeat the union organizing campaign.).

Here, the General Counsel has already argued and will present evidence at the hearing that Respondent's unlawful conduct in the disputed allegations were part of an overall plan to discourage employees' participation in ULP strikes and other protected concerted activities. *See* GC's Opp'n to Resp.'s PRV, pp. 10-12. Moreover, the disputed allegations, which include 1) disciplining (Compl., ¶¶ 21(c), 21(e)) and discharging employees (Compl., ¶¶ 14(c), 14(d), 15(c), 15(d)), 2) threatening (Compl., ¶¶ 12(a), 12(b)) and interrogating employees (Compl., ¶¶ 17(d), 26)); 3) interfering with employees' strike activity (Compl., ¶ 24); 4) engaging in surveillance of employees' protected activity (Compl. ¶¶ 9(a), 9(b)); 5) prohibiting employees from wearing union insignia (Compl. ¶¶ 25, 27(c)); and 6) denying employees access to its stores (Complaint ¶¶27(a), 27(b)), are all 8(a)(1) violations. See PMTD, Ex. 13 [FACC]. Because the disputed allegations are all Section 8(a)(1) violations and the General Counsel will show they are part of an overall effort to discourage employees from engaging in protected concerted activities, including ULP strikes, they are of the same class and have the same legal theory under the *Redd-I* test as the rest of the Complaint allegations.

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2. <u>The disputed allegations are factually related to the rest of the Complaint allegations because they allege misconduct that was part of Respondent's overall plan to undermine employees' protected concerted activity, satisfying the second mandatory prong of the *Redd-I* test</u>

The misconduct alleged in the Complaint was part of Respondent's overall plan to undermine employees' protected concerted activity, including their strike activity, and relate to or grow out of Respondent's reaction to employees' participation with UFCW and OUR Walmart. As mentioned above, in *Carney Hospital*, the Board held that "where the two sets of allegations demonstrate similar conduct, usually during the same period with a similar object, or there is causal nexus between the allegations and they are part of a chain or progression of events, or they are part of an overall plan to undermine union activity, we will find that the second prong of the *Redd-I* test has been satisfied." 350 NLRB at p. 630 (internal quotations and citations omitted).

Here, the General Counsel has already argued and will provide substantial evidence at trial that the misconduct in the disputed Complaint allegations was part of Respondent's overall plan to undermine employees' protected concerted activity. *See* GC's Opp'n to Resp.'s PRV, pp. 10-12. At trial, the General Counsel will show that Respondent issued unexcused absences to employees for participating in protected strikes and informed many employees that their strike participation was not protected in an attempt to thwart and attack employees' protected activity and participation with UFCW and OUR Walmart. *See id.* at p. 10. The General Counsel will also show that Respondent furthered its attempts to stifle employees' protected activity when it discharged and disciplined employees; threatened and interrogated employees; engaged in surveillance of employees; prohibited employees from wearing stickers dealing with their working conditions; interfered with employees' strike activity; and denied employees access to its stores, as alleged in the Complaint. *See ibid.*

The General Counsel has already argued and will present substantial evidence at trial that Respondent took these actions in direct response to the strikes at issue. *See* GC's Opp'n to Resp.'s PRV, pp. 10-11. For example, the General Counsel has alleged and will provide substantial evidence at trial that Respondent: issued discipline to employees (Compl., ¶¶ 21(c), 21(e)) and discharged employees (Compl., ¶¶ 14(c), 14(d), 15(c), 15(d), 21(d), and 21(e)), in part,

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to retaliate against employees for participating in the strikes; Respondent denied employees access to its stores as they attempted to deliver their strike notices to management (Compl., ¶ 27(a)); interrogated employees (Compl., ¶ 26) about when they were going on strike and threatened employees with reprisal (Compl., ¶ 12) if they went on strike; asked employees if they requested documents related to their strike absence for the UFCW and OUR Walmart (¶17(d)); restricted employees' protected activity while they were participating in a strike at its store (Complaint ¶24). *See ibid.*

Moreover, General Counsel has already argued and will present substantial evidence at trial that Respondent committed the unlawful acts pled in the Amended Consolidated Complaint during the same time period of when employees participated in protected strikes supported by UFCW and OUR Walmart. *See* GC's Opp'n to Resp.'s PRV, p. 11. The General Counsel will provide substantial evidence that Respondent's illegal exploits were part of a common course of action that Respondent undertook after making the corporate-wide decision to issue unexcused absences to employees for engaging in strikes. *See ibid.* The General Counsel has already argued and will demonstrate at trial Respondent sought to send a message to employees that it would not tolerate their protected activity and there was a price to be paid for partaking in strikes against its stores and participating with UFCW and OUR Walmart. *See ibid.* Consistent with the Board's decision in *Carney Hospital*, the acts alleged in the Complaint here are part of Respondent's overall plan to undermine employees' protected concerted activity and participation with UFCW and OUR Walmart. *See ibid.*; *Redd-I, Inc.*, 290 NLRB 1115 and *Carney Hosp.*, 350 NLRB 627.

At worst, any disputes or questions raised by Respondent regarding whether the disputed allegations are part of an overall plan and closely related under *Redd-I* and *Carney Hospital* demonstrates the existence of genuine issues of material fact that should be resolved at trial through the development of an evidentiary record.

3. The disputed allegations have the same or similar defenses as the rest of the Complaint allegations, satisfying the optional third prong of the *Redd-I* test

Respondent's claim in its Motion that just because one defense, the intermittent work stoppage legal theory, does not apply to the disputed allegations means they do not have the same or similar defenses under *Redd-I* is nonsensical. *See* PMTD, pp. 14-24. Respondent will raise the

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same or similar defenses to the disputed allegations as it would to the allegations raised in those Charges. Moreover, Respondent has already argued that it issued employees unexcused absences for reasons unrelated to their protected concerted activity and participation with UFCW and OUR Walmart. Respondent will make the same argument when it defends against the allegations that it discharged and disciplined employees; threatened and interrogated employees; engaged in surveillance of employees; prohibited employees from wearing union insignia; interfered with employees' strike activity; and denied employees access to its stores. Respondent's defenses to most, if not all, of the Complaint allegations will be based on the premise that it took actions against employees for reasons unrelated to their protected activity and participation with UFCW and OUR Walmart.

Moreover, Respondent has not alleged and cannot show any prejudice or claim surprise and that it did not receive sufficient notice of the disputed Complaint allegations. *See* PMTD. In its Motion, the Respondent admits that General Counsel presented all Complaint allegations to Respondent during the investigation and that it responded to those allegations through numerous extensive position statements and exhibits. *See* PMTD, pp. 6-7; GC's Opp'n Resp.'s PRV, pp. 11-12. Therefore, Respondent cannot claim it is being denied a fair opportunity to present its case, had insufficient time to prepare its defense, or did not know to preserve evidence relevant to the disputed Complaint allegations. *See Redd-I, Inc.*, 290 NLRB at pp. 1116-1117.

Even finding that the disputed allegations do not have the same or similar defenses as the rest of the Complaint allegations does not preclude a finding that the disputed allegations are "closely related" under *Redd-I.* Because this third factor, "as indicated by its language, is not a mandatory aspect of the *Redd-I* test." *Carney Hosp.*, 350 NLRB at p. 628, n. 8; see *Earthgrains Co*, 351 NLRB at p. 737, n. 18 (2007). Therefore, the disputed allegations are still "closely related" and under the Board's jurisdiction if the disputed allegations meet the first two mandatory prongs of the *Redd-I* test but not the third optional factor. *See ibid.* Here, because the disputed allegations meet the first two mandatory prongs of *Redd-I,* they are closely related even if they do not have the same or similar defenses. *See ibid.*

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Because the foregoing shows that the disputed allegations are closely related to the Complaint allegations, and, on this basis, are under the Board's jurisdiction, the Respondent's Motion to dismiss should be denied. [1]

IV. CONCLUSION

Based on the above, it is clear that Respondent's Partial Motion to dismiss the Complaint should be denied in its entirety.

Dated: January 4, 2017

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By: A. Delgado
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[1] Respondent argues the disputed allegations here should not be found closely related for the same reasons as some of the disputed allegations in *Wal-Mart Stores, Inc.*, 2016 WL 4547576 (Aug. 31, 2016) were found not to be related. However, that case is easily distinguishable from the instant case. The key factors that served as the basis for the decision in that case are not present here. First, this case does not rely on unspecific boilerplate charge language that is at issue in *Wal-Mart Stores, Inc.*, 2016 WL 4547576. Second, this case does not attempt to closely relate disputed allegations to withdrawn allegations. Third, the allegations here are of the same class and legal theory because they are from the same section of the act (8(a)(1)) and involve the same legal theory (that Respondent engaged in 8(a)(1) violations as part of an overall effort to discourage employees from engaging in protected concerted activities, including ULP strikes). Fourth, in contrast to *Wal-Mart Stores, Inc.*, 2016 WL 4547576, here the General Counsel, as described above, will present substantial evidence at trial that the disputed allegations are part of an overall plan to discourage employees from participating in protected strikes and are factually related to the Complaint allegations (under the second mandatory *Redd-I* prong) because Respondent engaged in the unlawful acts in the disputed allegations in direct response to employees' participation in the strikes at issue.

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CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 800 Wilshire Boulevard, Suite 1320, Los Angeles, California 90017.

On January 4, 2016, I served the within **UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION AND ORGANIZING UNITED FOR RESPECT AT WALMART'S OPPOSITION TO WALMART'S PARTIAL MOTION TO DISMISS AND REQUEST FOR EXPEDITED CONSIDERATION** on the interested parties in said action by placing a copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at Los Angeles, California, addressed as follows:

Via E-Filed & US Mail (Original + 8 Copies)

Gary Shinners
Executive Secretary
National Labor Relations Board
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Via E-mail and US Mail

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I certify under penalty of perjury that the above is true and correct.

Executed this 4th day of January, 2017, at Los Angeles, California.

A Delgado
Alejandro Delgado

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